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| APPLICATION NO. 7,21 | FILING DATE 10/09/96 | FIRST NAMED INVENTOR CIARCO, MARK S | ATTORNEY DOCKET NO. M |
|----------------------|----------------------|-------------------------------------|-----------------------|

JONES TULLAR & COOPER
P O BOX 2266 EADS STATION
ARLINGTON VA 22202

33M1/0114

EXAMINER
RISKIN, K

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 3312 | 2 |

DATE MAILED: 01/14/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

| | | |
|------------------------------|--|-----------------------------|
| Office Action Summary | Application No. 08/731,008 | Applicant(s) Giakoumakis |
| | Examiner Kelly R. O'Hara <i>JKO</i> | Group Art Unit 3312 |

Responsive to communication(s) filed on _____

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims *12/31/97*

Claim(s) 1-8 9 10 12 13 14 17 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-8 9 10 12 13 14 17 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3312

DETAILED ACTION

Claim Rejections - 35 USC § 112 and 35 USC § 101

1. *Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention, sustainable, non surgical breast augmentation through cocoa butter and Vitamin E is not supported by either a credible asserted utility or a well established utility.*

Applicant's assertion of specific credible utility is not considered credible. One of ordinary skill in the art would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such.

Claims 1-8 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention and would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such as stated previously.

2. Examiner was unable to contact the web site for "African Medicines Formulary; Vitamins." It is requested that applicant confirm that web site is still active and open.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly O'Hara whose telephone number is (703) 308-0780 and facsimile number is (703) 308-3139.

Kelly O'Hara


VINCENT MILLIN
S.P.E.
GROUP 3300

KRO

January 8, 1997